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Note Court's comments below.
MRW

Attorneys for Plaintiff,
CORY ANDERSON

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CORY ANDERSON, an individual,

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC, a
Delaware, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 2:23-cv-00162 FMO (MRWx)

**~~STIPULATED~~ PROTECTIVE
ORDER**

(MRW VERSION 4/19)

☒ Check if submitted without material
modifications to MRW form

Date Filed: January 10, 2023

Trial Date: January 23, 2024

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1.2 GOOD CAUSE STATEMENT

Defendant BMW contends that...

This is inadequate. However, Judge Wilner is familiar enough with SBA cases to understand that business-related materials and documents with consumer info require protection. MRW

~~[The parties must provide a statement establishing good cause for the entry of this pretrial protective order. C.f. Oliner v. Kontrabecki, 745 F.3d 1024, 1026 (9th Cir. 2014). The parties' statement must be specific to the facts and issues of this case, including the nature of the action, the type of anticipated discovery, and the potential resulting harm should relevant materials be disclosed publicly. The parties are advised not to rely on boilerplate assertions regarding good cause]~~

2. DEFINITIONS

1 2.1 Action: This pending Federal Lawsuit.

2 2.2 Challenging Party: a Party or Non-Party that challenges the
3 designation of information or items under this Order.

4 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
7 the Good Cause Statement.

8 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
9 their support staff).

10 2.5 Designating Party: a Party or Non-Party that designates information
11 or items that it produces in disclosures or in responses to discovery as
12 “CONFIDENTIAL.”

13 2.6 Disclosure or Discovery Material: all items or information, regardless
14 of the medium or manner in which it is generated, stored, or maintained (including,
15 among other things, testimony, transcripts, and tangible things), that are produced
16 or generated in disclosures or responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a
18 matter pertinent to the litigation who has been retained by a Party or its counsel to
19 serve as an expert witness or as a consultant in this Action.

20 2.8 House Counsel: attorneys who are employees of a party to this
21 Action. House Counsel does not include Outside Counsel of Record or any other
22 outside counsel.

23 2.9 Non-Party: any natural person, partnership, corporation, association,
24 or other legal entity not named as a Party to this action.

25 2.10 Outside Counsel of Record: attorneys who are not employees of a
26 party to this Action but are retained to represent or advise a party to this Action
27
28

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.
16

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.
23

24 Any use of Protected Material at trial will be governed by the orders of the
25 trial judge. This Order does not govern the use of Protected Material at trial.
26

27 4. DURATION

28

1 ONCE A CASE PROCEEDS TO TRIAL, ALL OF THE INFORMATION
 2 THAT WAS DESIGNATED AS CONFIDENTIAL OR MAINTAINED
 3 PURSUANT TO THIS PROTECTIVE ORDER BECOMES PUBLIC AND WILL
 4 BE PRESUMPTIVELY AVAILABLE TO ALL MEMBERS OF THE PUBLIC,
 5 INCLUDING THE PRESS, UNLESS COMPELLING REASONS SUPPORTED
 6 BY SPECIFIC FACTUAL FINDINGS TO PROCEED OTHERWISE ARE
 7 MADE TO THE TRIAL JUDGE IN ADVANCE OF THE TRIAL. SEE
 8 KAMAKANA V. CITY AND COUNTY OF HONOLULU, 447 F.3D 1172, 1180-
 9 81 (9TH CIR. 2006) (DISTINGUISHING “GOOD CAUSE” SHOWING FOR
 10 SEALING DOCUMENTS PRODUCED IN DISCOVERY FROM
 11 “COMPELLING REASONS” STANDARD WHEN MERITS-RELATED
 12 DOCUMENTS ARE PART OF COURT RECORD). ACCORDINGLY, THE
 13 TERMS OF THIS PROTECTIVE ORDER DO NOT EXTEND BEYOND THE
 14 COMMENCEMENT OF THE TRIAL.

15

16

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.
 19 Each Party or Non-Party that designates information or items for protection under
 20 this Order must take care to limit any such designation to specific material that
 21 qualifies under the appropriate standards. The Designating Party must designate
 22 for protection only those parts of material, documents, items, or oral or written
 23 communications that qualify so that other portions of the material, documents,
 24 items, or communications for which protection is not warranted are not swept
 25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited.
 27 Designations that are shown to be clearly unjustified or that have been made for an
 28

1 improper purpose (e.g., to unnecessarily encumber the case development process
2 or to impose unnecessary expenses and burdens on other parties) may expose the
3 Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
10 under this Order must be clearly so designated before the material is disclosed or
11 produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
17 contains protected material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection will be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party must
28

1 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
 2 If only a portion or portions of the material on a page qualifies for protection, the
 3 Producing Party also must clearly identify the protected portion(s) (e.g., by making
 4 appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party identify the
 6 Disclosure or Discovery Material on the record, before the close of the deposition
 7 all protected testimony.

8 (c) for information produced in some form other than documentary and for
 9 any other tangible items, that the Producing Party affix in a prominent place on the
 10 exterior of the container or containers in which the information is stored the
 11 legend “CONFIDENTIAL.” If only a portion or portions of the information
 12 warrants protection, the Producing Party, to the extent practicable, will identify the
 13 protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 15 failure to designate qualified information or items does not, standing alone, waive
 16 the Designating Party’s right to secure protection under this Order for such
 17 material. Upon timely correction of a designation, the Receiving Party must make
 18 reasonable efforts to assure that the material is treated in accordance with the
 19 provisions of this Order.
 20

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 23 designation of confidentiality at any time that is consistent with the Court’s
 24 Scheduling Order.
 25

26 6.2 Meet and Confer. The Challenging Party will initiate the dispute
 27 resolution process (and, if necessary, file a discovery motion) under Local Rule
 28 37.1 et seq.

1 6.3 The burden of persuasion in any such challenge proceeding will be on
 2 the Designating Party. Frivolous challenges, and those made for an improper
 3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 4 parties) may expose the Challenging Party to sanctions. Unless the Designating
 5 Party has waived or withdrawn the confidentiality designation, all parties will
 6 continue to afford the material in question the level of protection to which it is
 7 entitled under the Producing Party's designation until the Court rules on the
 8 challenge.
 9

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 12 disclosed or produced by another Party or by a Non-Party in connection with this
 13 Action only for prosecuting, defending, or attempting to settle this Action. Such
 14 Protected Material may be disclosed only to the categories of persons and under
 15 the conditions described in this Order. When the Action has been terminated, a
 16 Receiving Party must comply with the provisions of section 13 below (FINAL
 17 DISPOSITION).
 18

19 Protected Material must be stored and maintained by a Receiving Party at a
 20 location and in a secure manner that ensures that access is limited to the persons
 21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 23 otherwise ordered by the court or permitted in writing by the Designating Party, a
 24 Receiving Party may disclose any information or item designated
 25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this Action, as
 27 well as employees of said Outside Counsel of Record to whom it is reasonably
 28 necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including House Counsel) of
 2 the Receiving Party to whom disclosure is reasonably necessary for this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
 4 disclosure is reasonably necessary for this Action and who have signed the
 5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional
 9 Vendors to whom disclosure is reasonably necessary for this Action and who have
 10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (g) the author or recipient of a document containing the information or a
 12 custodian or other person who otherwise possessed or knew the information;

13 (h) during their depositions, witnesses, and attorneys for witnesses, in
 14 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
 15 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
 16 they will not be permitted to keep any confidential information unless they sign the
 17 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
 18 agreed by the Designating Party or ordered by the court. Pages of transcribed
 19 deposition testimony or exhibits to depositions that reveal Protected Material may
 20 be separately bound by the court reporter and may not be disclosed to anyone
 21 except as permitted under this Stipulated Protective Order; and

22 (i) any mediator or settlement officer, and their supporting personnel,
 23 mutually agreed upon by any of the parties engaged in settlement discussions.
 24

25
 26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 27 IN OTHER LITIGATION
 28

1 If a Party is served with a subpoena or a court order issued in other litigation
 2 that compels disclosure of any information or items designated in this Action as
 3 “CONFIDENTIAL,” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification
 5 will include a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or
 7 order to issue in the other litigation that some or all of the material covered by the
 8 subpoena or order is subject to this Protective Order. Such notification will
 9 include a copy of this Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be
 11 pursued by the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served
 13 with the subpoena or court order will not produce any information designated in
 14 this action as “CONFIDENTIAL” before a determination by the court from which
 15 the subpoena or order issued, unless the Party has obtained the Designating Party’s
 16 permission. The Designating Party will bear the burden and expense of seeking
 17 protection in that court of its confidential material and nothing in these provisions
 18 should be construed as authorizing or encouraging a Receiving Party in this Action
 19 to disobey a lawful directive from another court.
 20

21
 22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a
 25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
 26 produced by Non-Parties in connection with this litigation is protected by the
 27 remedies and relief provided by this Order. Nothing in these provisions should be
 28 construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
 2 produce a Non-Party's confidential information in its possession, and the Party is
 3 subject to an agreement with the Non-Party not to produce the Non-Party's
 4 confidential information, then the Party will:

5 (1) promptly notify in writing the Requesting Party and the Non-
 6 Party that some or all of the information requested is subject to a confidentiality
 7 agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated
 9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 10 specific description of the information requested; and

11 (3) make the information requested available for inspection by the
 12 Non-Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this court within
 14 14 days of receiving the notice and accompanying information, the Receiving
 15 Party may produce the Non-Party's confidential information responsive to the
 16 discovery request. If the Non-Party timely seeks a protective order, the Receiving
 17 Party will not produce any information in its possession or control that is subject to
 18 the confidentiality agreement with the Non-Party before a determination by the
 19 court. Absent a court order to the contrary, the Non-Party will bear the burden
 20 and expense of seeking protection in this court of its Protected Material.
 21

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has
 24 disclosed Protected Material to any person or in any circumstance not authorized
 25 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 26 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 27 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
 28

1 the person or persons to whom unauthorized disclosures were made of all the terms
 2 of this Order, and (d) request such person or persons to execute the
 3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
 4 A.

5
 6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
 9 inadvertently produced material is subject to a claim of privilege or other
 10 protection, the obligations of the Receiving Parties are those set forth in Federal
 11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 12 whatever procedure may be established in an e-discovery order that provides for
 13 production without prior privilege review. Pursuant to Federal Rule of Evidence
 14 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
 15 of a communication or information covered by the attorney-client privilege or
 16 work product protection, the parties may incorporate their agreement in the
 17 stipulated protective order submitted to the court.
 18

19
 20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of
 22 any person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 24 Protective Order no Party waives any right it otherwise would have to object to
 25 disclosing or producing any information or item on any ground not addressed in
 26 this Stipulated Protective Order. Similarly, no Party waives any right to object on
 27 any ground to use in evidence of any of the material covered by this Protective
 28 Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
 2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
 3 may only be filed under seal pursuant to a court order authorizing the sealing of the
 4 specific Protected Material at issue. If a Party's request to file Protected Material
 5 under seal is denied by the court, then the Receiving Party may file the information
 6 in the public record unless otherwise instructed by the court.
 7

8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in paragraph 4, within
 10 60 days of a written request by the Designating Party, each Receiving Party must
 11 return all Protected Material to the Producing Party or destroy such material. As
 12 used in this subdivision, "all Protected Material" includes all copies, abstracts,
 13 compilations, summaries, and any other format reproducing or capturing any of the
 14 Protected Material. Whether the Protected Material is returned or destroyed, the
 15 Receiving Party must submit a written certification to the Producing Party (and, if
 16 not the same person or entity, to the Designating Party) by the 60 day deadline that
 17 (1) identifies (by category, where appropriate) all the Protected Material that was
 18 returned or destroyed and (2) affirms that the Receiving Party has not retained any
 19 copies, abstracts, compilations, summaries or any other format reproducing or
 20 capturing any of the Protected Material. Notwithstanding this provision, Counsel
 21 are entitled to retain an archival copy of all pleadings, motion papers, trial,
 22 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
 23 and trial exhibits, expert reports, attorney work product, and consultant and expert
 24 work product, even if such materials contain Protected Material. Any such
 25 archival copies that contain or constitute Protected Material remain subject to this
 26 Protective Order as set forth in Section 4 (DURATION).
 27
 28

14. Any willful violation of this Order may be punished by civil or criminal contempt proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 8/16/2023

/s/ Sepehr Daghighian
Attorneys for Plaintiff

DATED: 8/16/2023

/s/ Georges A. Haddad
Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: August 21, 2023



HON. MICHAEL R. WILNER
United States Magistrate Judge

In the future, the parties are advised to comply with the requirement under the Local Rules to provide a proposed order in Word format. MRW

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby certify that the content of this document is acceptable to Georges A. Haddad, counsel for Defendant BMW OF NORTH AMERICA, LLC, and that I have obtained Georges A. Haddad's authorization to affix his electronic signature to this document.

Respectfully submitted,

CALIFORNIA CONSUMER ATTORNEYS, P.C.

/s/ Sepehr Daghighian
Michael H. Rosenstein, Esq.
Sepehr Daghighian, Esq.
Brian T. Shippen-Murray, Esq.
Attorneys for Plaintiff:
CORY ANDERSON

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States
 District Court for the Central District of California on [date] in the case of
 _____ **[insert case name and number]**. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms
 of this Stipulated Protective Order, even if such enforcement proceedings occur
 after termination of this action. I hereby appoint _____
[full name] of _____ **[full address and**
telephone number] as my California agent for service of process in connection
 with this action or any proceedings related to enforcement of this Stipulated
 Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____